



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-656

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31798.

The City of Houston (the "city") received the following request for information:

I would like to review the complete file relating to Project No. 93-006 known as Street Closure, Fair Oaks, at Brookside. This review would include but not be limited to the application, the site plan, all traffic studies, correspondence, letters in support and in opposition, notices, hearing information, the hearing transcript, hearing officer's opinion, actions of City Council, engineering drawings and blueprints and any other information related to the street closure.

The city contends that the requested records are excepted from disclosure pursuant to section 552.103(a).

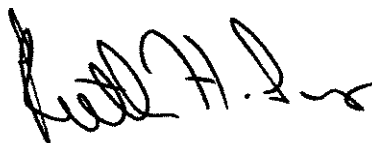
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted to this office information showing that the city is involved in pending litigation relating to the closure of the street. Our review of the records at issue, which were submitted to this office, shows that the records are related to the pending litigation.

However, not all of the documents submitted to this office may be withheld from disclosure pursuant to section 552.103(a). The information includes rules and ordinances adopted by the city. This type of information may not be withheld from disclosure. *See* Open Records Decision No. 551 (1990) at 2-3 ("it is difficult to conceive of a more open record" than municipal ordinances and other laws). There are also notices of public hearings. We note that information that is part of the record of a public meeting may not be withheld from disclosure under section 552.103(a). Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records").

The other information at issue may be withheld to the extent that the opposing parties to the anticipated litigation have not already had access. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. We note that as to the ordinances, regulations, and official records of public proceedings, the city may rely on this ruling as a prior determination under section 552.301 of the Government Code. This ruling otherwise is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding the other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 31798

Enclosures: Submitted documents

cc: Mr. John Quinlan
Fair Oaks Housing Corporation
10400 Sandpiper
Houston, Texas 77096
(w/o enclosures)